IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2581 (MS) OF 2001

(OLD NO. 39098 OF 1998)

D.R. Arya,
S/o Sri Ram Lal Arya,
R/o Parkot, Police Station-Kala Dhondhi,
District-Nainital. .....Petitioner.

Versus

1. The District Judge, Almora.
2. M/s Grasim Industries Limited,
   41, H-Floor, United Commercial Bank Building, Parliament Street, New Delhi, through its Managing Director.
3. The National Insurance Company Ltd., Preeti Vihar Branch, 21, Dariyaganj, New Delhi, through its Branch Manager.
4. Salim, S/o Abdul Kehir, R/o Mohalla Khatiyari, Police Station –Ram Nagar, District-Nainital. .....Respondents.

Dated: 17.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri B.D. Upadhyaya, Advocate for the petitioner and Standing Counsel for the respondent no. 1.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order-dated 10.09.1998 by which the restoration application has been rejected.

3. Briefly stated, on 27.09.1993, the petitioner met with an accident with the vehicle of the opp. Party nos. 2 and 4

in which the petitioner got seriously injured and filed Claim Case No. 24/94 before the Motor Accident Claims Tribunal, Almora.

4. The aforesaid claim petition was fixed for 20.09.1995 but the counsel for the petitioner could not appear on the said date and as such the same was dismissed in default on 20.09.1995 and thereafter the restoration application was moved through counsel on 27.09.1995 but the same was again dismissed on 01.11.1996 for non-prosecution.

5. On 30.11.1996, another restoration application was moved through counsel and the same was dismissed on 28.03.1997.

6. On 31.03.1997, again a restoration application was moved through counsel which was registered as Misc. Case No. 26/97 but the same was rejected by the District Judge, Almora vide impugned order dated 10.09.1998 on the ground that the restoration application has never been moved by the claimant and the Vakalatnama given to one Sri P.C. Tiwari, Advocate also does not authorize to move restoration application.

7. Rule 4 of the U.P. Motor Accident Claims Tribunal Rules, 1967 (hereinafter referred to as the Rules) provides that the claim application may either be sent to the Claim Tribunal by registered post or may be presented by his agent authorized in writing in this behalf. Rule 4 of the Act reads as under:-

> ***"4. Presentation of Application :-*** *An application under Rule 3 shall be presented to the claims tribunal by the applicant in person unless he is prevented by sufficient cause from appearing*

personally, in which case the application may either be sent to the claims tribunal by registered post or may be presented by his agent authorized in writing in this behalf."

8. Present writ petition has been filed against the order-dated 10.09.1998 passed by Motor Accident Claims Tribunal/District Judge, Almora whereby he rejected the restoration application.

9. In ***N. Balakrishnan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,*** It has been held that law of limitation is founded in public policy on '*the maxim of interest reipublicae up sit finis litium*' i.e. fal the general welfare, it has been held as under:-

" The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause'.

10. The Apex Court has held in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

11. In view of the above, a writ of certiorari is issued quashing the order dated 10.09.198.

12. A writ of mandamus is issued directing the Claims Tribunal to decide the M.A.C. No. 24/94 within a period of four months from the date of production of the certified copy of this order.

13. Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

17.08.2006

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